IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 23024 of 2007(N)

OS.291/2003 of MUNSIFF COURT, CHITTUR

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PETITIONER:

VELATHAL, W/O KUMARASWAMY GOUNDER,
ATTAYAMPATHY, GOVINDAPURAM PO, MUTHALAMADA,
CHITTUR TALUK, PALAKKAD DIST.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

SHAIK MUSTHAFA,
S/O.SHAHUL HAMEED, ATTAYAMPATHY,
GOVINDAPURAM P.O., MUTHALAMADA AMSOM,
CHITTUR TALUK, PALAKKAD DIST.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23024 OF 2007 N

Dated this the 27th July, 2007.

JUDGMENT

This writ petition is filed to set aside the order in E.P.241/04. The decree holder is the writ petitioner. She had obtained a decree for money and adduced evidence to the effect that the judgment debtor is an agriculturist deriving an income of Rs.10,000/- from the sale of coconut and further sum of Rs.8,000/- from other agricultural products. She was examined as P.W.1 and no chance was given to the respondent in the case to adduce evidence. The court below was not satisfied with the evidence of P.W.1 and therefore dismissed the petition. The definite contention of the decree holder is that the petitioner is having landed property with coconut trees and other properties where paddy is cultivated and is deriving income. In one part of the cross-examination she has stated that the income was derivable. But in another part she had pleaded ignorance about the extent of land, the yield derived and other aspects. The ownership and possession of a property is something which can be proved by production of documents. When the respondent has not even adduced any counter evidence the court should have approached the matter in a different direction. But, at

any rate, I feel that in order to satisfy the conscience of the court an opportunity can be given to the decree holder to prove the means of the judgment debtor by producing cogent evidence, if available. Therefore, the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration on the plea of means, after hearing both sides. The decree holder shall appear before the court on 5.9.2007 and the court below on that date shall fix a date for evidence after informing the judgment debtor about the same. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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